

P.E.R.C. NO. 2007-68

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Petitioner,

-and-

Docket No. SN-2007-050

POMPTON LAKES POLICE BENEVOLENT  
ASSOCIATION, LOCAL NO. 161,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds mandatorily negotiable a proposal made by Pompton Lakes Police Benevolent Association, Local No. 161 for inclusion in a collective negotiations agreement with the Borough of Pompton Lakes. The proposal seeks to modify contract language addressing the current 12-hour work schedule to eliminate the unilateral power of the Mayor and Council to return to an 8-hour schedule. The Commission holds that the proposal does not prohibit the Borough from making its arguments to the interest arbitrator that the present language should be retained, nor does it prevent the Borough from arguing that a future work schedule change is justified by non-negotiable governmental policy reasons.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Struble Ragno, LLC, attorneys  
(Joseph J. Ragno, Jr., on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky &  
Bukosky, attorneys (Marcia J. Tapia, on the brief)

DECISION

On February 20, 2007, the Borough of Pompton Lakes petitioned for a scope of negotiations determination. The Borough seeks a determination that a proposal made by Pompton Lakes Police Benevolent Association, Local No. 161 to modify contract language addressing the current 12-hour work schedule is not mandatorily negotiable. We hold that the proposed modification is mandatorily negotiable.

The parties have filed briefs and exhibits. These facts appear.

The PBA represents patrol officers, sergeants, lieutenants and captains. The parties' expired collective negotiations

agreement was effective from January 1, 2002 through December 31, 2006. The parties are negotiating for a successor agreement and the PBA has petitioned for interest arbitration. That petition lists "codification of the 12-hour work schedule as an issue to be arbitrated."

Our jurisdiction is narrow. We do not consider the wisdom of proposals, only the abstract issue of their negotiability. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Article V, Section 3 provides:

Effective March 3, 2003 a 12 hour shift system shall be implemented and will only apply to the rank of patrol officer or sergeant and to those officers while assigned to uniformed patrol duties. The 12 hour work schedule shall be subject to 6 month reviews by the parties for the length of the Agreement. Following such reviews, if it is the opinion of the Mayor and Council that the desired goals of the change to a 12 hour shift have not been satisfactorily achieved, the Mayor and Council will unilaterally decide if the shifts should return to the prior 8 hour shift schedule or not. The parties acknowledge that the 12 hour work schedule provides for an additional 110 hours of work annually. Said additional 110 hours shall be provided to each respective employee in compensatory time on a straight time basis. The additional 110 hours is intended to be utilized within the same calendar year in which it is earned. Overtime for persons working the 12 hour schedule shall be defined as all work in excess of the scheduled 12 hour day for any work which is performed on a

scheduled day off consistent with the annually posted 12 hour work schedule.

The PBA seeks to modify this section to delete the sentence conferring unilateral power on the Mayor and Council to return to an eight-hour shift schedule.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), sets the standards for determining whether a contract proposal is mandatorily negotiable:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. [87 N.J. at 92-93; citations omitted]

No statute or regulation is asserted to preempt negotiations.

Teaneck Tp. and FMBA Loc. No. 42, 353 N.J. Super. 289, 304 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), states:

Our holding in [In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987)] was that the union's proposal to reduce to writing a work schedule already in effect was negotiable. We emphasized that the Township submitted no facts in support of its position

and failed to meet its burden "to advance reasons in support of its need, from a policy making point of view, to unilaterally control police work hours."

This reasoning applies as the Borough has stated that it has no plans to change the existing work schedule. The current language may have given the Borough the authority, during the contract term, to alter the work schedule, but negotiability is determined by the application of the Paterson standards, not by contract terms. See, e.g., Willingboro Bd. of Ed., P.E.R.C. No. 80-46, 5 NJPER 475 (¶10240 1979), aff'd P.E.R.C. No. 80-75, 5 NJPER 553 (¶10287 1979), aff'd NJPER Supp.2d 88 (¶70 App. Div. 1980), certif. den. 87 N.J. 320 (1981) (contract language giving employer broad discretion to deny sabbatical leaves did not convert sabbatical leaves to non-negotiable subject).

The Borough relies only on its authority under the existing contract language. Although it cites cases holding that shift changes undertaken for specific managerial reasons may not be negotiable, the Borough has not asserted that it intends to change the existing schedule, nor has it specified any managerial need that would prompt it to seek such a change. Our ruling that the PBA's proposal to modify the language is mandatorily negotiable does not prevent the Borough from arguing to the interest arbitrator that the present language should be retained without change in a successor contract. Nor does it prevent the

Borough from arguing that a future work schedule change is justified by non-negotiable governmental policy reasons.

ORDER

The proposal of Pompton Lakes Police Benevolent Association, Local No. 161 to modify Article V, Section 3 is mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: May 31, 2007

Trenton, New Jersey